IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3071 OF 2006

Devendrasinh Kalidas Desai, .. Petitioner
Vs
M/s Gaurav Enterprises, .. Respondent.

Mr C.M.Kothari, for the petitioner.
Mr I.S.Thakur, for the respondent.

WITH

WRIT PETITION NO.8002 OF 2005

M/s Gaurav Enterprises, .. Petitioner
Vs
Devendrasinh Kalidas Desai, .. Respondent.

Mr I.S.Thakur, for the petitioner.
Mr C.M.Kothari, for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 16.08.2006

PC:

1. Heard the learned counsel for the parties.

2. In writ petition no.3071 of 2006, the petitioner has made the following prayer:-

> "(a) This Hon'ble Court be pleased to issue writ of mandamus or any other writ in the nature of mandamus or nay order, direction to the Court of Civil Judge, Dadra Nagar haveli, Silvassa to give his findings on all the issues as per the remand order of the Hon'ble High Court dated 23rd September,1998 in First Appeal No.757 of 1998 and passed the judgment and order followed by the decree in accordance with law in Special Civil Suit No.13 of 1997 as expeditiously as possible within a period of four weeks or within the time

as may be fixed by this Hon’ble Court."

The aforesaid prayer is made by the petitioner since the trial court after remand of the matter by this court vide order dated 23.9.1998, has decided only an issue as to whether document Exhibit-22 is genuine. The suit has not been disposed of so far. In short, after quashing and setting aside the judgment and order dated 8.7.1998 passed by the trial court in Special Civil Suit No.13 of 1997, till this date the said suit has remained to be decided finally. The order passed by this Court dated 23.9.1998 reads thus;

> "Appeal admitted. Mr Govilkar waives service. By consent, appeal called out for hearing.
>
> 2. By consent, the impugned order of the trial court dated 8th July,1998 is quashed and set aside. Special Civil Suit No.13 of 1997 is restored to the file of the Civil Judge, Senior Division, Dadra and Nagar Haveli, Silvassa, for retrial, in accordance with law. While retrying the suit, the learned trial Judge shall have the document dated 13th September,1996 (numbered as Exhibit-22 in the trial court proceedings) examined by a hand-writing expert and make a finding on the genuineness or otherwise of the said document in the light of the contentions of the parties before him, apart from recording findings on the other issues raised in the trial. No further evidence, apart from the evidence of handwriting expert, shall be

permitted by the trial Court.
3. Appeal allowed with no order as to costs.
4. Writ to go down immediately.

By this order, it is clear, that the judgment dated 8.7.1998 rendered in special civil suit no.13 of 1997 was set aside and the matter was remanded for retrial and the trial court was directed to record findings on all the issues including an issue of genuineness of the document at Exhibit-22. Both the learned counsel are ad idem that the trial court ought to have decided the suit finally by recording his findings on all the issues. In the circumstances, the trial Court is directed to decide the special civil suit no.13 of 1997 as a whole by recording his finding on all the issues on the basis of the evidence recorded earlier and after remand by this court vide order dated 23.9.1998. Insofar as the finding recorded in respect of the document at Exhibit-22 is concerned, that is maintained keeping it open for both the parties to challenge the said finding, if so advised, in appeal after the suit is decided finally by the trial court. As a matter of fact, the respondent-defendant has challenged that order dated 30.9.2002 by filing an independent writ petition no.8002 of 2005 in this court. I do not deem it appropriate to examine the correctness of the

said order at this stage. It will be open for the respondent-defendant to challenge that finding also in appeal in the event the suit is decreed against him and/or by filing cross objection if the suit is dismissed and the appeal is filed by the plaintiff. In the circumstances, this petition is disposed of in the aforesaid terms.

3. The trial court shall allow both the sides to advance their arguments on all other issues and record its finding thereon and dispose of the suit as expeditiously as possible and preferably within six months from the date of receipt of this order.

4. Insofar as Writ Petition No.8002 of 2005 is concerned, that also stands disposed of in view of the aforesaid observations.

(D.B.BHOSALE,J.)